States, and should finally result in an acquittal of the charge, in whole or in part, the State could not have a writ of error to review the judgment." The rule seems to be well settled that mandamus will be issued only when there is no other adequate remedy. As said by Mr. CH. JUSTICE WAITE in the *Hoard* case: "It is an elementary principle that a mandamus cannot be used to perform the office of an appeal or writ of error," citing *Ex parte Loring,* 94 U. S. 418. Possibly the basis of the decision in the principal case was that the remedy by writ of error or appeal would not be adequate. The case seems to be a radical departure from previous decisions and the hitherto supposed limits upon the use of the extraordinary writ of mandamus, and apparently denies the Circuit Court of the United States, a court of general jurisdiction, the power to decide for itself whether or not it has jurisdiction to try a cause properly brought before it.

SALES—CONDITIONAL SALES—ACCIDENTAL DESTRUCTION OF PROPERTY—ON WHOM LOSS FALLS.—Plaintiff company sold to defendant a gasoline engine upon condition that the title and right of possession should remain in the vendor until payment had been made in full by vendee, as specified in the contract. Before all the payments had become due the engine, while in the possession of the vendee but without fault on his part, was wrecked by fire. *Held,* that the destruction of the engine did not relieve the vendee from the obligation to pay in full. *Jessup et al.* v. *Fairbanks, Morse & Co.* (1906), — Ind. —, 78 N. E. Rep. 1050.

The case is of interest as seeming to lay down the startling rule that where goods are accidentally destroyed, the loss shall not fall upon him in whom the title is. The general rule under ordinary circumstances is that such loss is borne by the owner. ENG. AND AM. ENCYC. OF LAW, Vol. 21, p. 634; MECHEM, SALES (1901 Edition), Vol. I, p. 523; *Mill Co.* v. *Butler,* 109 Ga. 469; *Williams* v. *Allen,* 10 Humph. (Tenn.) 339; *Grant* v. *United States,* 7 Wall. 331; *Morey* v. *Medbury,* 10 Hun. 540; *Smith* v. *Barber,* 153 Ind. 322; *Allen* v. *Delano,* 55 Me. 113. There is hopeless conflict, however, on the question whether the same rule holds good in the case of a conditional sale where possession is given to the vendee but title remains in the vendor. Note in MICHIGAN LAW REVIEW, Vol. 3, p. 468, and cases cited. One view holds to the general principle that the loss follows the title and is to the effect that in cases of conditional contract to sell where no title passes until payment in full, the loss unless otherwise provided by the contract falls upon the party agreeing to sell. MECHEM, SALES (1901 Edition), Vol. I, p. 523; *Stone* v. *Waite,* 88 Ala. 599; *Neally* v. *Wilhelm* (Ia.), 61 Am. Dec. 118; *Pierce* v. *Cooley,* 56 Mich. 552. Under this holding, where goods have been destroyed before all the payments had become due and the vendor brought suit upon promissory notes of the vendee, the plea of failure of consideration has been held a good defense. *Cobb* v. *Tufts* (Texas), 2 Willson Civ. Cas. Ct. App., § 152; *Arthur & Co.* v. *Blackman,* 63 Fed. 536; *Ballard* v. *Burgett,* 40 N. Y. 314; BENJAMIN, SALES (4th Am. Edition), p. 399. These decisions are based upon the theory that since the goods have been destroyed the vendor cannot give the vendee title upon completion of the payments and

that as the transfer of the title is the consideration for the vendee's promise to pay, the consideration has failed and the vendor cannot collect. The other view, which is in conformity with the principal case, viz., that in case of destruction of the goods the vendee is still liable for the payments in full, is also supported by numerous decisions. ENG. & AM. ENCYC. OF LAW, Vol. 21, p. 634; *Tufts* v. *Wynne,* 45 Mo. App. 42; *Burnley* v. *Tufts,* 66 Miss. 48; *Orsborn* v. *So. Shore Lumber Co.,* 91 Wis. 526; *Planters' Bank* v. *Vandyck,* 51 Tenn. 617; *Humeston* v. *Cherry,* 23 Hun. 141; *Tufts* v. *Griffin,* 107 N. C. 47. Some of the courts holding this view, rest their decision upon the ground that the vendor in such case is in reality a mortgagee or the holder of a lien. *Planters' Bank* v. *Vandyck,* 51 Tenn. 617; *Orsborn* v. *So. Shore Lumber Co.,* 91 Wis. 526; *Burnley* v. *Tufts,* 66 Miss. 48. Other courts hold to the theory that in such cases the vendee makes an absolute promise, the consideration for which is the possession and use of the chattel and the right to obtain title to it by completing payments, and since he gets what he bargained for he must pay. *Tufts* v. *Griffin,* 107 N. C. 47; *Burnley* v. *Tufts,* 66 Miss. 48. There seems to be much of reason in the cases which adhere to the general principle that in conditional sales as well as under ordinary circumstances the loss should be borne by him who has title. Surely the consideration for which the vendee promises to pay is not alone for the possession of the chattels and the right to acquire title by completing the payments, but also that when he shall have completed the payments the chattels shall become his property. If through accident it becomes impossible for the owner to transfer title, having in mind the general principle that loss follows the title, there is some force in the decisions which do not compel the vendee to pay for property which never becomes his.

SALES—RESTRICTION ON SALES OF COPYRIGHTED BOOKS—COMBINATIONS IN RESTRAINT OF TRADE.—Defendant was a member of the American Publishers' Association, which controlled ninety per cent of the book business of the country. It was a rule of the association that no member should sell any books of any kind to anyone who sold copyrighted books at less than the price adopted by the association nor to anyone who should be known to have sold to others who cut prices. *Held,* that this combination related to inter-state commerce, that defendant had entered into a contract in restraint of inter-state trade, and that the copyright law could not render the contract valid. *Mines* v. *Scribner et al.* (1906), — C. C. S. D. New York —, 147 Fed. Rep. 927.

The case is of interest as involving two important questions, viz., what is the test for determining whether a contract or combination is in restraint of inter-state trade, and, further, what is the effect upon the validity of contracts involving inter-state trade, when the subject matter is one of patent rights or copyrights? The mere fact that a combination has secured a monopoly of the manufacture of some product, even if it be one of the necessities of life, does not constitute a restraint of inter-state trade, *United States* v. *E. C. Knight,* 156 U. S. 1. Some courts have adopted the test of whether the combination in question controlled the entire market of the